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International, Inc., and Alan Sporn

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROBERT LOTTER, an individual,

Plaintiff,

v.

NATIONAL MARKETING, INC., a  
Wyoming Corporation, et al.,

Defendants.

) Case No. 8:08-cv-01093-JVS (DFMx)

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) **STIPULATED PROTECTIVE ORDER**

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1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following stipulated protective order (the "Order"). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery, and that the protection it affords from public disclosure and use extends only to the limited information or

1 items that are entitled to confidential treatment under the applicable legal principles. The  
2 parties further acknowledge, as set forth in Section 3 below, that this Order does not entitle  
3 them to file confidential information under seal; the Local Rules and standard procedures of  
4 this Court must be followed when a party seeks permission from the Court to file material  
5 under seal.

6           2.     DEFINITIONS

7                 2.1     Challenging Party: A Party or Non-Party that challenges the designation  
8 of information or items under this Order.

9                 2.2     “CONFIDENTIAL” Information or Items: Information (regardless of  
10 how it is generated, stored or maintained) or tangible things that qualify for protection under  
11 Federal Rule of Civil Procedure 26(c).

12                2.3     Counsel (without qualifier): Outside Counsel of Record and House  
13 Counsel (as well as their support staff).

14                2.4     Designating Party: A Party or Non-Party that designates information or  
15 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

16                2.5     Disclosure or Discovery Material: All items or information, regardless  
17 of the medium or manner in which it is generated, stored, or maintained (including, among  
18 other things, testimony, transcripts, and tangible things), that are produced or generated in  
19 disclosures or responses to discovery in this matter.

20                2.6     Expert: A person with specialized knowledge or experience in a matter  
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
22 witness or as a consultant in this action.

23                2.7     House Counsel: Attorneys who are employees of a party to this action.  
24 House Counsel does not include Outside Counsel of Record or any other outside counsel.

25                2.8     Non-Party: Any natural person, partnership, corporation, association, or  
26 other entity not named as a Party to this action.

27                2.9     Outside Counsel of Record: Attorneys who are not employees of a party  
28 to this action but are retained to represent or advise a party to this action and have appeared in

1 this action on behalf of that party or are affiliated with a law firm which has appeared on behalf  
2 of that party.

3 2.10 Party: Any party to this action, including all of its officers, directors,  
4 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
5 staffs).

6 2.11 Producing Party: A Party or Non-Party that produces Disclosure or  
7 Discovery Material in this action.

8 2.12 Professional Vendors: Persons or entities that provide litigation support  
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
10 organizing, storing, or retrieving data in any form or medium) and their employees and  
11 subcontractors.

12 2.13 Protected Material: Any Disclosure or Discovery Material that is  
13 designated as "CONFIDENTIAL."

14 2.14 Receiving Party: A Party that receives Disclosure or Discovery Material  
15 from a Producing Party.

### 16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only Protected  
18 Material (as defined above), but also (1) any information copied or extracted from Protected  
19 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
20 testimony, conversations, or presentations by Parties or their Counsel that might reveal  
21 Protected Material.

22 However, the protections conferred by this Stipulation and Order do not cover the  
23 following information: (a) any information that is in the public domain at the time of disclosure  
24 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving  
25 Party as a result of publication not involving a violation of this Order, including becoming part  
26 of the public record through trial or otherwise; and (b) any information known to the Receiving  
27 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a  
28 source who obtained the information lawfully and under no obligation of confidentiality to the

1 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
2 agreement or order.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations  
5 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in  
6 writing or a court order otherwise directs. Final disposition shall be deemed to be the later of  
7 (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
8 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials,  
9 or reviews of this action, including the time limits for filing any motions or applications for  
10 extension of time pursuant to applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection under this Order  
14 must take care to limit any such designation to specific material that qualifies under the  
15 appropriate standards. The Designating Party must designate for protection only those parts of  
16 material, documents, items, or items, or communications for which protection is not warranted  
17 are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized  
18 designations are prohibited. Designations that are shown to be clearly unjustified or that have  
19 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case  
20 development process or to impose unnecessary expenses and burdens on other parties) expose  
21 the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated  
23 for protection do not qualify for protection, that Designating Party must promptly notify all  
24 other Parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
26 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
27 protection under this Order must be clearly so designated before the material is disclosed or  
28 produced.

1 Designation in conformity with this Order requires:

2 (a) For information in documentary form (e.g., paper or electronic documents,  
3 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
4 Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected  
5 material. If only a portion or portions of the material on a page qualifies for protection, the  
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
7 markings in the margins).

8 A Party or Non-Party that makes original documents or materials available for  
9 inspection need not designate them for protection until after the inspecting Party has indicated  
10 which material it would like copied and produced. During the inspection and before the  
11 designation, all of the material made available for inspection shall be deemed  
12 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied  
13 and produced, the Producing Party must determine which documents, or portions thereof,  
14 qualify for protection under this Order. Then, before producing the specified documents, the  
15 Producing Party must affix the "CONFIDENTIAL" legend to each page that contains Protected  
16 Material. If only a portion or portions of the material on a page qualifies for protection, the  
17 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
18 appropriate markings in the margins).

19 (b) For testimony given in deposition or in other pretrial or trial proceedings,  
20 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
21 other proceeding, all protected testimony;

22 (c) For information produced in some form other than documentary and for any  
23 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
24 container or containers in which the information or item is stored the legend  
25 "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
26 protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
28 failure to designate qualified information or items does not, standing alone, waive the

1 Designating Party's right to secure protection under this Order for such material. Upon timely  
 2 correction of a designation, the Receiving Party must make reasonable efforts to assure that the  
 3 material is treated in accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
 6 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's  
 7 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
 8 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
 9 does not waive its right to challenge a confidentiality designation by electing not to mount a  
 10 challenge promptly after the original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
 12 resolution process by providing written notice of each designation it is challenging and  
 13 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been  
 14 made, the written notice must recite that the challenge to confidentiality is being made in  
 15 accordance with this specific paragraph of the Protective Order. The parties shall attempt to  
 16 resolve each challenge in good faith and must begin the process by conferring directly (in voice  
 17 to voice dialog; other forms of communication are not sufficient) within 14 days of the date of  
 18 service of notice. In conferring, the Challenging Party must explain the basis for its belief that  
 19 the confidentiality designation was not proper and must give the Designating Party an  
 20 opportunity to review the designated material, to reconsider the circumstances, and, if no  
 21 change in designation is offered, to explain the basis for the chosen designation. A Challenging  
 22 Party may proceed to the next stage of the challenge process only if it has engaged in this meet  
 23 and confer process first or establishes that the Designating Party is unwilling to participate in  
 24 the meet and confer process in a timely manner.

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
 26 court intervention, the Designating Party shall file and serve a motion to retain confidentiality  
 27 pursuant to the local rules of this Court within 21 days of the initial notice of challenge, or  
 28 within 14 days of the parties agreeing that the meet and confer process will not resolve their

1 dispute, whichever is later. The parties, however, may stipulate in writing to a longer period of  
 2 time, and such stipulation need only be filed with the motion. Each such motion must be  
 3 accompanied by a competent declaration affirming that the movant has complied with the meet  
 4 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party  
 5 to make such a motion including the required declaration within the time allowed shall  
 6 automatically waive the confidentiality designation for each challenged designation. In  
 7 addition, the Challenging Party may file a motion challenging a confidentiality designation at  
 8 any time if there is good cause for doing so, including a challenge to the designation of a  
 9 deposition transcript or any portions thereof. Any motion brought pursuant to this provision  
 10 must be accompanied by a competent declaration affirming that the movant has complied with  
 11 the meet and confer requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 13 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
 14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
 15 sanctions.

16 Unless the Designating Party has waived the confidentiality designation by failing to  
 17 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
 18 material in question the level of protection to which it is entitled under the Producing Party's  
 19 designation until the court rules on the challenge.

## 20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
 22 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
 23 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
 24 disclosed only to the categories of persons and under the conditions described in this Order.  
 25 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
 26 Section 13 below (FINAL DISPOSITION). Protected Material must be stored and maintained  
 27 by a Receiving Party at a location and in a secure manner that ensures that access is limited to  
 28 the persons authorized under this Order.

1                   7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving  
3 Party may disclose any information or item designated “CONFIDENTIAL” only to:

4                   (a) The Receiving Party’s Outside Counsel of Record in this action, as  
5 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
6 disclose the information for this litigation and who have signed the “Acknowledgment and  
7 Agreement to Be Bound” that is attached hereto as Exhibit A;

8                   (b) The officers, directors, and employees (including House Counsel) of  
9 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11                   (c) Experts (as defined in this Order) of the Receiving Party to whom  
12 disclosure is reasonably necessary for this litigation and who have signed the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14                   (d) The Court and its personnel;

15                   (e) Court reporters and their staff, professional jury or trial consultants,  
16 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this  
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
18 A);

19                   (f) During their depositions, witnesses in the action to whom disclosure  
20 is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
21 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court.  
22 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected  
23 Material must be separately bound by the court reporter, and may not be disclosed to anyone  
24 except as permitted under this Stipulated Protective Order.

25                   (g) The author or recipient of a document containing the information or  
26 a custodian or other person who otherwise possessed or knew the information.

27               8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
28 OTHER LITIGATION



1 If a Party is served with a subpoena or a court order issued in other litigation that  
 2 compels disclosure of any information or items designated in this action as  
 3 “CONFIDENTIAL,” that Party must:

4 (a) Promptly notify in writing the Designating Party. Such notification shall  
 5 include a copy of the subpoena or court order;

6 (b) Promptly notify in writing the party who caused the subpoena or order to  
 7 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 8 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
 9 Protective Order; and

10 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
 11 the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with the  
 13 subpoena or court order shall not produce any information designated in this action as  
 14 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
 15 issued, unless the Party has obtained the Designating Party’s permission. The Designating  
 16 Party shall bear the burden and expense of seeking protection in that court of its confidential  
 17 material – and nothing in these provisions should be construed as authorizing or encouraging a  
 18 Receiving Party in this action to disobey a lawful directive from another court.

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
 20 IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by a Non-  
 22 Party in this action and designated as “CONFIDENTIAL.” Such information produced by  
 23 Non-Parties in connection with this litigation is protected by the remedies and relief provided  
 24 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from  
 25 seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to  
 27 produce a Non-Party’s confidential information in its possession, and the Party is subject to an  
 28 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the

1 Party shall:

2 (1) Promptly notify in writing the Requesting Party and the Non-Party  
3 that some or all of the information requested is subject to a confidentiality agreement with a  
4 Non-Party;

5 (2) Promptly provide the Non-Party with a copy of the Stipulated  
6 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
7 description of the information requested; and

8 (3) make the information requested available for inspection by the Non-  
9 Party.

10 (c) If the Non-Party fails to object or seek a protective order from this Court  
11 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
12 produce the Non-Party's confidential information responsive to the discovery request. If the  
13 Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
14 information in its possession or control that is subject to the confidentiality agreement with the  
15 Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-  
16 Party shall bear the burden and expense of seeking protection in this court of its Protected  
17 Material.

18 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
20 Protected Material to any person or in any circumstance not authorized under this Stipulated  
21 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating  
22 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies  
23 of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures  
24 were made of all the terms of this Order, and (d) request such person or persons to execute the  
25 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
27 PROTECTED MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain

1 inadvertently produced material is subject to a claim of privilege or other protection, the  
2 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
3 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in  
4 an e-discovery order that provides for production without prior privilege review. Pursuant to  
5 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect  
6 of disclosure of a communication or information covered by the attorney-client privilege or  
7 work product protection, the parties may incorporate their agreement in a stipulated protective  
8 order submitted to the Court.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
11 person to seek its modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
13 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
14 producing any information or item on any ground not addressed in this Stipulated Protective  
15 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
16 the material covered by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the  
18 Designating Party or a court order secured after appropriate notice to all interested persons, a  
19 Party may not file in the public record in this action any Protected Material. A Party that seeks  
20 to file under seal any Protected Material must comply with the local rules of this Court and  
21 applicable court procedures. Protected Material may only be filed under seal pursuant to a  
22 court order authorizing the sealing of the specific Protected Material at issue, which shall be  
23 issued pursuant to local rule and this Court's procedures. If a Receiving Party's request to file  
24 Protected Material under seal is denied by the court, then the Receiving Party may file the  
25 information in the public record unless the Court orders otherwise.

26 13. FINAL DISPOSITION

27 Within 60 days after the final disposition of this action, as defined in paragraph  
28 4, each Receiving Party must return all Protected Material to the Producing Party or destroy

1 such material. As used in this subdivision, "all Protected Material" includes all copies,  
2 abstracts, compilations, summaries, and any other format reproducing or capturing any of the  
3 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving  
4 Party must submit a written certification to the Producing Party (and, if not the same person or  
5 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where  
6 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
7 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other  
8 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
9 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,  
10 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
11 reports, attorney work product, and consultant and expert work product, even if such materials  
12 contain Protected Material. Any such archival copies that contain or constitute Protected  
13 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Michael T. Stoller  
Counsel for Plaintiff

16  
17 Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Charles R. Perry  
Counsel for Defendants

18  
19 IT IS SO ORDERED.

20 Dated: June 9, 2014


21   
\_\_\_\_\_  
DOUGLAS F. McCORMICK  
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Lotter v. National Marketing Inc.*, et al., United States District Court, Central District of California, Case No. SACV 08-01093 JVS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Signed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ in \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_